

IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.31158 of 2007
RAM NIWAS CHOUDHARY & ORS
Versus
STATE OF BIHAR

With

Cr.Misc. No.20197 of 2008
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17.07.2008

Two quashing applications have been filed. The first application is Criminal Miscellaneous No. 31158 of 2007 challenging the order dated 30.4.2007 by which the Magistrate has taken cognizance for the offences under Section 498A of the Indian Penal Code. The second application is Criminal Miscellaneous No. 20197 of 2008 which challenges the order passed on 5.5.2008 whereby the Sub-divisional Judicial Magistrate has rejected the petitioners' petition under Section 245 of the Code of Criminal Procedure.

The facts are that one Kumud Choudhary filed a complaint against her husband (petitioner no. 7) Manoj Kumar Choudhary and her in-laws alleging therein that they had demanded a sum of Rs. 2 lacs and had ousted her from her matrimonial home because the money was not paid by her father.

The complainant in support of her allegations had named five persons as witnesses. Out of the five persons her parents were examined and thereafter she sought permission of the Court on 16.8.2005 to permit her brother to be examined as a witness which was allowed by the Court below. Again the complainant sought permission that one Md. Mushtaq should be examined on her behalf, that too was

allowed by the Court below.

All these three witnesses were examined and after examination of the witnesses the court by order dated 22.8.2006 found that the conduct of the complainant and the improbability in his evidence was such that offences under Section 498A were not made out against the petitioners. According to the Court below Md. Mushtaq and the brother of the complainant Harish Agrawal did not support the allegations made in the complaint petition. The complainant filed a Revision before the Sessions Judge, Katihar and the matter was remitted back to the Magistrate for consideration. The Magistrate passed an order dated 30.4.2007 taking cognizance for the offences under Section 498A. The order dated 27.2.2007 is annexed as annexure-6 to this application.

From perusal of the order it appears that the Sessions Judge, Katihar had gone through the evidence produced on behalf of the complainant and found that there was sufficient material to issue summons against the accused persons for facing trial.

On the basis of the observation made by the Sessions Judge, Katihar, the Magistrate took cognizance on 30.4.2007.

Learned counsel on behalf of the petitioner has submitted that after the matter was remitted by the Sessions Judge, Katihar by order dated 27.2.2007, the Magistrate ought to have held an enquiry to determine whether the allegations made out in the complaint petition against the accused persons are supported in further enquiry.

I do not find any merit in the submissions made on

behalf of the petitioner as the order of the Sessions Judge, Katihar is quite explicit inasmuch as he has stated that from the evidence on solemn affirmation and the evidence of the witnesses examined on behalf of the complainant a prima facie case has been made out. Therefore, the order dated 30.4.2008 taking cognizance does not suffer from any illegality.

Learned counsel for the petitioner also challenged the order refusing to discharge the petitioners on the ground that the evidence that has come on record is full of improbabilities and the witnesses contradict each other on material facts. The question whether the evidence is reliable or is full of improbabilities or whether the witnesses

contradict each other would be considered in a full fledged trial and the Court after hearing the matter will decide these submissions on the evidence which comes on record, and it would not be proper at this stage to discharge the petitioners.

In the result I do not find any illegality in the orders before this Court. As a result the two abovementioned applications are dismissed.

Sanjay

(Sheema Ali Khan,J.)